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C O N F I D E N T I A L SECTION 01 OF 02 BUCHAREST 000594

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SUBJECT: ROMANIAN CABINET BYPASSING PARLIAMENT - AGAIN

REF: A. BUCHAREST 448

[1](#)B. BUCHAREST 402

[1](#)C. BUCHAREST 78

Classified By: CDA Jeri Guthrie-Corn for reasons 1.4 (B) and (D).

[11.](#) (SBU) Summary. Under the Romanian Constitution, the Cabinet has the authority to issue "emergency ordinances" (EOs) in special circumstances. These acts take effect immediately and have the force of law. Although Parliament must subsequently ratify or overturn them, there is no time limit for parliamentary action and many EOs remain on the books indefinitely. Successive administrations have turned repeatedly to EOs to enact what they perceive as urgent legislation, often on shaky legal grounds. This authority has allowed the Cabinet to bypass Parliament's legislative function, reducing transparency in decision-making. Decisions on EOs often occur quickly and behind closed doors, creating an unpredictable environment for the business community and greater public distrust of the Romanian political system. End Summary.

[12.](#) (SBU) Like a fix for a drug addict, the Government of Romania (GOR) can't seem to shake the habit of using EOs to take "urgent" measures. The tendency is entrenched across party lines, although the incumbent Cabinet of Prime Minister Emil Boc has a marginally better record in its first year of office than its predecessors. The Boc Government issued 93 EOs in its first six months, compared to 119 for the previous PNL-led government (2005) and 108 for the PSD government that took office in 2001.

[13.](#) (SBU) The most immediate problem with the EO system is its lack of transparency. Under the law, the Cabinet must explain why a given situation is an emergency before approving an EO. This requirement is toothless, however, as the Cabinet itself determines whether the "emergency" is legitimate. This elastic definition has permitted the cabinet to enact just about anything it considers important. The only restraint on EO abuse is the Constitution. EOs may not be issued in the field of constitutional law, may not affect "fundamental state institutions," infringe upon freedoms or liberties in the Constitution, or expropriate property. Even these restrictions are flexible: the current Cabinet, for example, used EOs to rename many government ministries (thereby eliminating civil service protection for existing employees), alter salary structures and pensions for public employees, change tax law, and even retract a pay raise for teachers approved by the previous Parliament and signed into law by President Basescu.

[14.](#) (SBU) Parliament has been compliant in this power grab, approving the vast majority of EOs when they are finally submitted. Because an EO immediately comes into force, any subsequent legislation and regulations are of uncertain legality if it is later determined that the EO is unconstitutional. Quashing an EO means undoing any actions for its implementation during the period it was in effect.

Thus, decisions made by the Government under an invalidated EO become open to legal challenge, creating confusion in the Parliament and bureaucratic headaches for the executive branch. Rather than face this complex legislative puzzle, most parliamentarians seem willing to acquiesce.

¶15. (SBU) With Parliament supine, the Constitutional Court has become by default the preferred venue for hearing complaints over bad lawmaking. The Court overturned 12 EOs as unconstitutional during the first seven months of 2009, and eight in 2008, the most notable being the EO modifying the Supreme National Defense Council (ref B). Still, the jurisdiction of the Court is limited to determining whether or not an EO conforms to the Constitution, leaving no other effective recourse to those wronged by a valid and legal EO.

¶16. (SBU) Business associations, including the American Chamber of Commerce, have complained that the Government often does not publicize EOs under consideration lest there be a backlash against its provisions; EOs tend to appear suddenly and take affected parties by surprise. This contravenes the spirit of the "Sunshine Law," which requires consultations and a 30-day comment period on legislation affecting the business environment. In theory, businesses will have a chance to air their concerns when the EO comes before Parliament, but in practice EOs are passed as-is and remain in force until Parliament acts (which may be months later, if ever). Many businesses see the problem not as one of ill-intent (although there are occasional reports of the Government using EOs to favor certain firms), but rather one of unintended consequences. An EO designed to remedy one problem may inadvertently create new difficulties for other

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businesses. For example, the EO revising public procurement legislation unilaterally changed the rules of the game, impacting a number of companies already involved in ongoing state procurement tenders. There are instances in which EOs have directly harmed U.S. and other investor interests, such as the Government's decision earlier this year to freeze its contributions to private pension funds rather than raise them by 0.5 percent as required in the Pension Reform Law.

¶17. (C) Comment. Like most legislatures, the Romanian Parliament is not known for its speed, so the Government has resorted to EOs for any "must pass" legislation. They are also a handy trick for bypassing extended parliamentary debate, and public input, on controversial measures. Although some of these EO laws may be beneficial, such as the 2008 revisions to harmonize Romania's money-laundering statutes with international norms, they can also include such unfortunate initiatives as an EO passed by the current Cabinet empowering itself to dismiss unilaterally any act of Parliament (ref A). By and large these EOs are ugly, demonstrating a profound distrust of the democratic process and concentrating power in a coterie of politicians and powerbrokers. Moving decisions behind closed doors makes corruption easier and more attractive to those so inclined, frustrates those not well connected, and deepens the cynicism among those already skeptical about the state of Romanian democracy. End Comment.

GUTHRIE-CORN